

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF SOUTH CAROLINA
ROCK HILL DIVISION

Robert Edwards,)	CIVIL ACTION NO. 0:08-2263-JFA
)	
Plaintiff,)	
)	
vs.)	<u>DEFENDANT CHARLES SCHWAB'S</u>
)	<u>MOTION TO COMPEL ARBITRATION</u>
Charles Schwab Investment Management,)	<u>AND TO DISMISS OR STAY ACTION</u>
Inc.,)	
)	
Defendant.)	

Pursuant to Sections 3 and 4 of the Federal Arbitration Act (“FAA”), 9 U.S.C. §§ 1-16, and the rules of the Financial Industry Regulatory Authority (“FINRA”), Defendant Charles Schwab Investment Management, Inc. (“Schwab”) hereby moves this Court to compel Plaintiff to arbitrate any and all disputes with Schwab as required by FINRA and to dismiss or stay this action until arbitration has been completed.¹

As more fully set forth in the accompanying Memorandum of Law, Schwab moves for the relief requested in this Motion on the grounds that the Schwab IRA Account Application Agreement, in which Plaintiff voluntarily entered into, provides that all claims arising out of or relating to the Schwab account must first be arbitrated in accordance to the rules of FINRA. See

¹ Schwab files this Motion to Compel Arbitration and to Stay or Dismiss Action in lieu of filing an answer. See Stokes v. Metropolitan Life Ins. Co., 571 S.E.2d 711, 713 (S.C. Ct. App. 2002) (reciting that defendants in that case filed motion to abate and compel arbitration in lieu of filing an answer to plaintiff’s complaint); Intravascular Research Ltd. v. Endosonics Corp., 994 F.Supp. 564, 567 n.3 (D. Del. 1998) (“Historically, motions to stay have been recognized as tolling the time period for answering a complaint because pre-answer consideration of these motions have been found to maximize the effective utilization of judicial resources.”); 5C Charles Alan Wright & Arthur R. Miller, Fed. Prac. & Proc. § 1360 (3d ed. 2004) (recognizing accepted practice of filing motion to stay and compel arbitration in lieu of filing answer in federal courts) (collecting cases). To the extent an answer is required, Schwab denies all allegations contained in Plaintiff’s complaint.

Schwab IRA Account Application Agreement, Sections 10-11, referenced in Schwab IRA Account Application, dated March 9, 2007; and see Rule 12200 of the National Association of Securities Dealers' (FINRA's predecessor) Code of Arbitration Procedure.

WHEREFORE, Defendant respectfully prays for the entry of an Order by the Court staying this action and compelling arbitration of the dispute between the parties pursuant to Sections 3 and 4 of the FAA, 9 U.S.C. §§ 1-16, and the rules of FINRA.

Respectfully submitted this the 11th day of July, 2008,

NELSON MULLINS RILEY & SCARBOROUGH, L.L.P.

By: s/James K. Lehman
James K. Lehman
jim.lehman@nelsonmullins.com
Federal Bar No. 5378
Daniel R. D'Alberto
dan.dalberto@nelsonmullins.com
Federal Bar No. 9774
1320 Main Street/ 17th Floor
Post Office Box 11070 (29211)
Columbia, SC 29201
(803) 799-2000

Attorneys for Defendant Charles Schwab Investment Management,
Inc.